

whom a civil penalty has been assessed under section 502(c)(8) of the Act, pursuant to a final order within the meaning of § 2570.161(g) of this chapter, shall be personally liable for the payment of such penalty.

(k) *Cross-reference.* See §§ 2570.160 through 2570.171 of this chapter for procedural rules relating to administrative hearings under section 502(c)(8) of the Act.

[75 FR 8800, Feb. 26, 2010]

§ 2560.502i-1 Civil penalties under section 502(i).

(a) *In general.* Section 502(i) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) permits the Secretary of Labor to assess a civil penalty against a party in interest who engages in a prohibited transaction with respect to an employee benefit plan other than a plan described in section 4975(e)(1) of the Internal Revenue Code (the Code). The initial penalty under section 502(i) is five percent of the total “amount involved” in the prohibited transaction (unless a lesser amount is otherwise agreed to by the parties). However, if the prohibited transaction is not corrected during the “correction period,” the civil penalty shall be 100 percent of the “amount involved” (unless a lesser amount is otherwise agreed to by the parties). Paragraph (b) of this section defines the term “amount involved,” paragraph (c) defines the term “correction,” and paragraph (d) defines the term “correction period.” Paragraph (e) illustrates the computation of the civil penalty under section 502(i). Paragraph (f) is a cross reference to the Department’s procedural rules for section 502(i) proceedings.

(b) *Amount involved.* Section 502(i) of ERISA states that the term “amount involved” in that section shall be defined as it is defined under section 4975(f)(4) of the Code. As provided in 26 CFR 141.4975-13, 26 CFR 53.4941(e)-1(b) is controlling with respect to the interpretation of the term “amount involved” under section 4975 of the Code. Accordingly, the Department of Labor will apply the principles set out at 26 CFR 53.4941(e)-1(b) in determining the “amount involved” in a transaction subject to the civil penalty provided by

section 502(i) of the Act and this section.

(c) *Correction.* Section 502(i) of ERISA states that the term “correction” shall be defined in a manner that is consistent with the definition of that term under section 4975(f)(5) of the Code. As provided in 26 CFR 141.4975-13, 26 CFR 53.4941(e)-1(c) is controlling with respect to the interpretation of the term “correction” for purposes of section 4975 of the Code. Accordingly, the Department of Labor will apply the principles set out in 26 CFR 53.4941(e)-1(c) in interpreting the term “correction” under section 502(i) of the Act and this section.

(d) *Correction period.* (1) In general, the “correction period” begins on the date the prohibited transaction occurs and ends 90 days after a final agency order with respect to such transaction.

(2) When a party in interest seeks judicial review within 90 days of a final agency order in an ERISA section 502(i) proceeding, the correction period will end 90 days after the entry of a final order in the judicial action.

(3) The following examples illustrate the operation of this paragraph:

(i) A party in interest receives notice of the Department’s intent to impose the section 502(i) penalty and does not invoke the ERISA section 502(i) prohibited transaction penalty proceedings described in § 2570.1 of this chapter within 30 days of such notice. As provided in § 2570.5 of this chapter, the notice of the intent to impose a penalty becomes a final order after 30 days. Thus, the “correction period” ends 90 days after the expiration of the 30 day period.

(ii) A party in interest contests a proposed section 502(i) penalty, but does not appeal an adverse decision of the administrative law judge in the proceeding. As provided in § 2570.10(a) of this chapter, the decision of the administrative law judge becomes a final order of the Department unless the decision is appealed within 20 days after the date of such order. Thus, the correction period ends 90 days after the expiration of such 20 day period.

(iii) The Secretary of Labor issues to a party in interest a decision upholding an administrative law judge’s adverse decision. As provided in § 2570.12(b) of this chapter, the decision of the Secretary becomes a final order of the Department immediately. Thus, the correction period will end 90 days after the issuance of the Secretary’s order unless the party in interest judicially contests the order within that 90 day period. If the party

in interest so contests the order, the correction period will end 90 days after the entry of a final order in the judicial action.

(e) *Computation of the section 502(i) penalty.* (1) In general, the civil penalty under section 502(i) is determined by applying the applicable percentage (five percent or one hundred percent) to the aggregate amount involved in the transaction. However, a continuing prohibited transaction, such as a lease or a loan, is treated as giving rise to a separate event subject to the sanction for each year (as measured from the anniversary date of the transaction) in which the transaction occurs.

(2) The following examples illustrate the computation of the section 502(i) penalty:

(i) An employee benefit plan purchases property from a party in interest at a price of \$10,000. The fair market value of the property is \$5,000. The “amount involved” in that transaction, as determined under 26 CFR 53.4941(e)-1(b), is \$10,000 (the greater of the amount paid by the plan or the fair market value of the property). The initial five percent penalty under section 502(i) is \$500 (five percent of \$10,000).

(ii) An employee benefit plan executes a four year lease with a party in interest at an annual rental of \$10,000 (which is the fair rental value of the property). The amount involved in each year of that transaction, as determined under 26 CFR 53.4941(e)-1(b), is \$10,000. The amount of the initial sanction under ERISA section 502(i) would be a total of \$5,000: \$2,000 ($\$10,000 \times 5\% \times 4$ with respect to the rentals paid in the first year of the lease); \$1,500 ($\$10,000 \times 5\% \times 3$ with respect to the second year); \$1,000 ($\$10,000 \times 5\% \times 2$ with respect to the third year); \$500 ($\$10,000 \times 5\% \times 1$ with respect to the fourth year).

(f) *Cross reference.* See §§ 2570.1-2570.12 of this chapter for procedural rules relating to section 502(i) penalty proceedings.

[53 FR 37476, Sept. 26, 1988]

§ 2560.503-1 Claims procedure.

(a) *Scope and purpose.* In accordance with the authority of sections 503 and 505 of the Employee Retirement Income Security Act of 1974 (ERISA or the Act), 29 U.S.C. 1133, 1135, this section sets forth minimum requirements for employee benefit plan procedures pertaining to claims for benefits by participants and beneficiaries (hereinafter referred to as claimants). Except

as otherwise specifically provided in this section, these requirements apply to every employee benefit plan described in section 4(a) and not exempted under section 4(b) of the Act.

(b) *Obligation to establish and maintain reasonable claims procedures.* Every employee benefit plan shall establish and maintain reasonable procedures governing the filing of benefit claims, notification of benefit determinations, and appeal of adverse benefit determinations (hereinafter collectively referred to as claims procedures). The claims procedures for a plan will be deemed to be reasonable only if—

(1) The claims procedures comply with the requirements of paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) of this section, as appropriate, except to the extent that the claims procedures are deemed to comply with some or all of such provisions pursuant to paragraph (b)(6) of this section;

(2) A description of all claims procedures (including, in the case of a group health plan within the meaning of paragraph (m)(6) of this section, any procedures for obtaining prior approval as a prerequisite for obtaining a benefit, such as preauthorization procedures or utilization review procedures) and the applicable time frames is included as part of a summary plan description meeting the requirements of 29 CFR 2520.102-3;

(3) The claims procedures do not contain any provision, and are not administered in a way, that unduly inhibits or hampers the initiation or processing of claims for benefits. For example, a provision or practice that requires payment of a fee or costs as a condition to making a claim or to appealing an adverse benefit determination would be considered to unduly inhibit the initiation and processing of claims for benefits. Also, the denial of a claim for failure to obtain a prior approval under circumstances that would make obtaining such prior approval impossible or where application of the prior approval process could seriously jeopardize the life or health of the claimant (e.g., in the case of a group health plan, the claimant is unconscious and in need of immediate care at the time medical treatment is required) would